

NANCY I. STETZEL,
Plaintiff,
v.
CAROLYN W. COLVIN, Commissioner
of Social Security,¹
Defendant.

No. CV-11-439-CI
ORDER GRANTING PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT

BEFORE THE COURT are cross-motions for Summary Judgment. ECF No. 14, 15. Attorney Maureen J. Rosette represents Nancy I. Stetzel (Plaintiff); Special Assistant United States Attorney Daphne Banay represents the Commissioner of Social Security (Defendant). The parties have consented to proceed before a magistrate judge. ECF No. 12. After reviewing the administrative record and briefs filed by the parties, the court **GRANTS** Plaintiff's Motion for Summary Judgment and **DENIES** Defendant's Motion for Summary Judgment.

On May 26, 2009, Plaintiff filed an application for

¹Carolyn W. Colvin became the Acting Commissioner of Social Security on February 14, 2013. Pursuant to FED. R. CIV. P. 25(d), Carolyn W. Colvin is substituted for Michael J. Astrue as the Defendant in this suit. No further action need be taken to continue this suit. 42 U.S.C. § 405(q).

1 supplemental security income, alleging disability beginning May 1,
2 2003. Tr. 17; 145. Plaintiff reported that she stopped working due
3 to depression, personality disorder, and hepatitis C. Tr. 150.
4 Plaintiff's claim was denied initially and on reconsideration, and
5 she requested a hearing before an administrative law judge (ALJ).
6 Tr. 71-126. A hearing was held on June 1, 2010, at which vocational
7 expert Sharon Welter, Plaintiff's roommate Collette Downs and
8 Plaintiff, who was represented by counsel, testified. Tr. 37-70.
9 ALJ Caroline Siderius presided. Tr. 37. The ALJ denied benefits on
10 June 18, 2010. Tr. 17-30. The instant matter is before this court
11 pursuant to 42 U.S.C. § 405(g).

12 **STATEMENT OF THE CASE**

13 The facts of the case are set forth in detail in the transcript
14 of proceedings and are briefly summarized here. At the time of the
15 hearing, Plaintiff was 46 years old and lived in her friend's duplex
16 with the friend and the friend's 16 year-old daughter. Tr. 43.
17 Plaintiff has two adult children. She was in special education
18 classes in grade school, dropped out in the seventh grade, and she
19 eventually obtained a GED. Tr. 42-43; 49; 52.

20 Plaintiff testified that she used methamphetamine until two
21 years prior to the hearing. Tr. 45. She also testified that she is
22 unable to work due to depression. Tr. 46. She said she last
23 attempted suicide one year prior to the hearing. Tr. 50.

24 Plaintiff also said she does not cook, clean, drive, or use
25 public transportation. Tr. 51. She occasionally does her own
26 laundry. Tr. 52. She said she can sit for about 15 minutes at a
27 time, and can stand for about ten minutes before her back starts to
28 burn. Tr. 53-54. Plaintiff said she has trouble with her memory,

1 she does not sleep well, and she hears voices. Tr. 57. Plaintiff
2 testified that when she is around people, she experiences panic
3 attacks. Tr. 59.

4 Plaintiff's previous work included telephone solicitor and
5 housekeeper. Tr. 65.

6 ADMINISTRATIVE DECISION

7 At step one, ALJ Siderius found that Plaintiff had not engaged
8 in substantial gainful activity since May 26, 2009, the application
9 date. Tr. 19. At step two, she found Plaintiff had the severe
10 impairments of hepatitis C, asthma, depression and personality
11 disorder. Tr. 19. At step three, the ALJ determined Plaintiff's
12 impairments, alone and in combination, did not meet or medically
13 equal one of the listed impairments in 20 C.F.R., Subpart P,
14 Appendix 1 (20 C.F.R. §§ 416.920(d), 416.925 and 416.926). Tr. 25.
15 The ALJ found Plaintiff has the residual functional capacity ("RFC")
16 to perform a light work, with the following limitations: "She should
17 avoid concentrated exposure to odors, gases, fumes, and poor
18 ventilation. She is capable of routine, simple, repetitive 1-3 step
19 tasks. She should be isolated from other workers, with rare contact
20 with coworkers or the public." Tr. 26.

21 In step four findings, the ALJ found Plaintiff's statements
22 regarding pain and limitations were not credible to the extent they
23 were inconsistent with the RFC findings. Tr. 27. The ALJ found
24 that Plaintiff is capable of performing jobs that exist in
25 significant numbers in the national economy, such as
26 cleaner/housekeeper. Tr. 29.

27 STANDARD OF REVIEW

28 In *Edlund v. Massanari*, 253 F.3d 1152, 1156 (9th Cir. 2001), the

1 court set out the standard of review:

2 A district court's order upholding the Commissioner's
3 denial of benefits is reviewed *de novo*. *Harman v. Apfel*,
4 211 F.3d 1172, 1174 (9th Cir. 2000). The decision of the
5 Commissioner may be reversed only if it is not supported
6 by substantial evidence or if it is based on legal error.
7 *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9th Cir. 1999).
8 Substantial evidence is defined as being more than a mere
9 scintilla, but less than a preponderance. *Id.* at 1098.
10 Put another way, substantial evidence is such relevant
11 evidence as a reasonable mind might accept as adequate to
12 support a conclusion. *Richardson v. Perales*, 402 U.S.
13 389, 401 (1971). If the evidence is susceptible to more
14 than one rational interpretation, the court may not
15 substitute its judgment for that of the Commissioner.
16 *Tackett*, 180 F.3d at 1097; *Morgan v. Commissioner of*
17 *Social Sec. Admin.*, 169 F.3d 595, 599 (9th Cir. 1999).

18 The ALJ is responsible for determining credibility,
19 resolving conflicts in medical testimony, and resolving
20 ambiguities. *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th
21 Cir. 1995). The ALJ's determinations of law are reviewed
22 *de novo*, although deference is owed to a reasonable
23 construction of the applicable statutes. *McNatt v. Apfel*,
24 201 F.3d 1084, 1087 (9th Cir. 2000).

25 It is the role of the trier of fact, not this court, to resolve
26 conflicts in evidence. *Richardson*, 402 U.S. at 400. If evidence
27 supports more than one rational interpretation, the court may not
28 substitute its judgment for that of the Commissioner. *Tackett*, 180
F.3d at 1097; *Allen v. Heckler*, 749 F.2d 577, 579 (9th Cir. 1984).
Nevertheless, a decision supported by substantial evidence will
still be set aside if the proper legal standards were not applied in
weighing the evidence and making the decision. *Browner v. Secretary*
of Health and Human Services, 839 F.2d 432, 433 (9th Cir. 1988). If
substantial evidence exists to support the administrative findings,
or if conflicting evidence exists that will support a finding of
either disability or non-disability, the Commissioner's
determination is conclusive. *Sprague v. Bowen*, 812 F.2d 1226, 1229-
1230 (9th Cir. 1987).

SEQUENTIAL PROCESS

The Commissioner has established a five-step sequential evaluation process for determining whether a person is disabled. 20 C.F.R. §§ 404.1520(a), 416.920(a); see *Bowen v. Yuckert*, 482 U.S. 137, 140-42 (1987). In steps one through four, the burden of proof rests upon the claimant to establish a prima facie case of entitlement to disability benefits. *Tackett*, 180 F.3d at 1098-99. This burden is met once a claimant establishes that a physical or mental impairment prevents him from engaging in his previous occupation. 20 C.F.R. §§ 404.1520(a)(4), 416.920(a)(4). If a claimant cannot do his past relevant work, the ALJ proceeds to step five, and the burden shifts to the Commissioner to show that (1) the claimant can make an adjustment to other work; and (2) specific jobs exist in the national economy which claimant can perform. *Batson v. Commissioner of Social Sec. Admin.*, 359 F.3d 1190, 1193-94 (2004). If a claimant cannot make an adjustment to other work in the national economy, a finding of "disabled" is made. 20 C.F.R. §§ 404.1520(a)(4)(I-v), 416.920(a)(4)(I-v).

ISSUES

The question presented is whether substantial evidence exists to support the ALJ's decision denying benefits and, if so, whether that decision is based on proper legal standards. Plaintiff contends the ALJ erred by improperly rejecting the medical opinions of W. Scott Mabee, Ph.D., and Bill Martin, R.N. ECF No. 14 at 12-13.

DISCUSSION

Plaintiff contends that the ALJ improperly rejected the

1 opinions of Dr. Mabee or Nurse Martin.² The ALJ rejected both Dr.
2 Mabee and Nurse Martin's opinions by stating: "The undersigned gives
3 no weight to the opinions of Dr. Mabee and Nurse Martin as careful
4 review indicates they relied heavily on the claimant's self
5 statements to arrive at their conclusions. Indeed, Dr. Mabee
6 diagnosed depression at 9F based upon the exaggerated results of the
7 Beck Depression Inventory." Tr. 28. In the context of evaluating
8 a claim for SSA benefits, an examining physician's opinion generally
9 must be given greater weight than that of a non-examining physician.
10 *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir. 1995). As with a
11 treating physician, the ALJ must provide clear and convincing
12 reasons for rejecting the uncontradicted opinion of an examining
13 physician, and "specific" and "legitimate" reasons, supported by
14 substantial evidence in the record, for rejecting an examining
15 physician's contradicted opinion. *Id.* at 830-31. "The ALJ can meet
16 this burden by setting out a detailed and thorough summary of the
17 facts and conflicting clinical evidence, stating his interpretation
18 thereof, and making findings." *Cotton v. Bowen*, 799 F.2d 1403, 1408
19 (9th Cir. 1986).

20 The opinion of a non-examining physician is not itself
21 substantial evidence that justifies the rejection of the opinion of
22 either a treating physician or an examining physician. *Id.* at 831.
23 Factors that an ALJ should consider when evaluating all medical
24 opinions include "the amount of relevant evidence that supports the
25

26 ²Because the ALJ's error related to the analysis of Dr. Mabee's
27 opinion requires remand, we do not address Plaintiff's contention
28 that the ALJ improperly rejected Nurse Martin's opinions.

1 opinion and the quality of the explanation provided; the consistency
2 of the medical opinion with the record as a whole; [and] the
3 specialty of the physician providing the opinion." *Orn v. Astrue*,
4 495 F.3d 625, 631 (9th Cir. 2007).

5 In this case, the ALJ provided a single reason for rejecting
6 both medical opinions: the opinions relied "heavily" upon
7 Plaintiff's discredited self-reports. Tr. 28. Where a medical
8 source's opinion is based largely on the Plaintiff's own subjective
9 description of symptoms, and the ALJ has discredited the Plaintiff's
10 claim as to those subjective symptoms, the ALJ may reject that
11 opinion. *Fair v. Bowen*, 885 F.2d 597, 605 (9th Cir. 1989).

12 Dr. Mabee examined³ Plaintiff on three occasions. During the
13 January 13, 2009, exam, Dr. Mabee administered the following
14 objective tests: (I) Beck Depression Inventory; (ii) Hamilton
15 Anxiety rating Scale; (iii) Rey 15-Item test; (iv) Trail Making
16 Tests, Parts A & B; (v) Weschler Adult Intelligence Scale, 4th
17 Edition; and the (vi) Personality Assessment Inventory. Tr. 249.
18 Dr. Mabee diagnosed major depressive disorder, recurrent, severe
19 without psychotic features and explained that, in contrast to an
20 earlier diagnosis by Brooke Sjostrum, MS, a malingering diagnosis
21 did not apply in light of Plaintiff's borderline personality
22 features:

23 She was not given a diagnosis of malingering at this time
24 because she does not appear to meet diagnostic criteria
25 for this diagnosis. She was giving sufficient effort on
26 all testing. People with borderline personality features
often view their lives in an extremely negative manner.
They will exaggerate their circumstances because this is

27 ³Dr. Mabee directly supervised the March 10, 2009, evaluation
28 conducted by Amy Robinson, MS. Tr. 254.

1 actually how they see their life. Therefore it is likely
2 their testing results may be skewed and will over report
negative symptoms.

3 Tr. 253. Dr. Mabee completed a Psychological/Psychiatric Evaluation
4 on March 25, 2009. Tr. 273-76. He opined Plaintiff was markedly
5 limited in her abilities to: (1) exercise judgment and make
6 decisions; (2) relate appropriately to co-workers and supervisors;
7 and (3) respond appropriately to and tolerate the pressures and
8 expectations of a normal work setting. Tr. 275.

9 Dr. Mabee next examined Plaintiff on November 12 and 13, 2009,
10 and again completed a Psychological/Psychiatric Evaluation form.
11 Tr. 391-98. Dr. Mabee assessed Plaintiff was severely limited in
12 her abilities to: (1) exercise judgment and make decisions; (2)
13 relate appropriately to co-workers and supervisors; and (3) respond
14 appropriately to and tolerate the pressures and expectations of a
15 normal work setting. Tr. 396. Dr. Mabee also assessed Plaintiff
16 with marked limitations in both her ability to interact
17 appropriately in public contacts and in her ability to maintain
18 appropriate behavior in a work setting. Tr. 396.

19 As part of this exam, Dr. Mabee administered both the MMPI-2-RF
20 and a Mental Status Exam, and he determined the results of the MMPI-
21 2-RF were invalid due to Plaintiff's personality disorder:

22 Her F-r and Fs scaled scores were elevated beyond the
23 level of interpretation. This suggests she was over-
24 reporting psychological, cognitive and somatic complaints.
25 She was not likely over-reporting for secondary gain.
Rather, people with Borderline Personality Disorder
typically see their life as severely constricted as they
are reporting it.

26 Tr. 398.

27 Finally, Dr. Mabee examined Plaintiff on September 1, 2011.
28 Tr. 627-31. In the Psychological/Psychiatric Evaluation, Dr. Mabee

1 observed Plaintiff had several markedly severe impairments relating
2 to depression, poor coping skills and social avoidance. Tr. 628.
3 Dr. Mabee also opined Plaintiff was severely limited in her
4 abilities to communicate with public contacts and maintain
5 appropriate behavior in a work setting. Tr. 629. Dr. Mabee
6 indicated Plaintiff was markedly limited in her ability to
7 communicate in a work setting with limited public contact. Tr. 629.
8 Dr. Mabee diagnosed Plaintiff with major depression disorder,
9 recurrent severe with psychotic features posttraumatic stress
10 disorder, and borderline personality disorder with dependent
11 features. Tr. 628.

12 The record establishes that Dr. Mabee examined Plaintiff,
13 administered objective medical diagnostic tests, interpreted the
14 test results, and applied his interpretation of the test results to
15 the categories in the Psychological/Psychiatric Evaluation forms.
16 The ALJ's assertion that Dr. Mabee relied "largely" upon Plaintiff's
17 discredited self-reports, and the attendant inference that Dr. Mabee
18 ignored the objective medical evidence and his own observations, is
19 not supported by the record.

20 Moreover, as apparent justification for giving no weight to Dr.
21 Mabee's opinions, the ALJ asserted "[i]ndeed, Dr. Mabee diagnosed
22 depression at 9F based upon the exaggerated results of the Beck
23 Depression Inventory." Tr. 28. As noted above, Dr. Mabee
24 explicitly twice explained his consistent interpretation of
25 Plaintiff's objective test results as not reflective of malingering
26 for secondary gain, but instead simply reflecting Plaintiff's
27 personality disorder. See Tr. 253; 398.

28 The ALJ may not substitute her own interpretations of

1 Plaintiff's medical test results for that of Dr. Mabee, a licensed
2 physician. See *Gonzalez Perez v. Secretary of Health and Human*
3 *Services*, 812 F.2d 747, 749 (1st Cir. 1987) (ALJ may not substitute
4 own opinion for findings and opinion of physician); *McBrayer v.*
5 *Secretary of Health and Human Services*, 712 F.2d 795, 799 (2nd Cir.
6 1983) (ALJ cannot arbitrarily substitute own judgment for competent
7 medical opinion); *Benecke v. Barnhart*, 379 F.3d 587, 594 (9th Cir.
8 2004) (error for ALJ to discount opinions of treating physicians by
9 relying on own disbelief of claimant's symptom testimony and
10 misunderstanding of fibromyalgia).

11 In this case, the ALJ's proffered reason for rejecting Dr.
12 Mabee's testimony is not specific and legitimate, is not supported
13 by the record and requires remand.

14 CONCLUSION

15 Having reviewed the record and the ALJ's findings, the court
16 concludes the ALJ's decision is not supported by substantial
17 evidence and is based on legal error. On remand, the ALJ shall
18 reconsider the medical evidence, and provide a detailed and thorough
19 summary of the facts and conflicting medical evidence, stating her
20 interpretation thereof, and provide findings. In evaluating the
21 medical evidence, the ALJ should consider and provide findings
22 related to the amount of relevant evidence that supports the medical
23 opinions and the quality of the explanations provided, the
24 consistency of the medical opinions with the record as a whole, and
25 the specialty of the physicians providing the opinion. See *Orn*, 495
26 F.3d at 631.

27 The decision is therefore **REVERSED** and the case is **REMANDED** for
28 further proceedings consistent with this opinion. Accordingly,

IT IS ORDERED:

1. Plaintiff's Motion for Summary Judgment, **ECF No. 14**, is **GRANTED**, and the matter is **REMANDED** to the Commissioner for additional proceedings.

2. Defendant's Motion for Summary Judgment, **ECF No. 15**, is **DENIED**;

3. An application for attorney fees may be filed by separate motion.

The District Court Executive is directed to file this Order and provide a copy to counsel for Plaintiff and Defendant. Judgment shall be entered for Plaintiff, and the file shall be **CLOSED**.

DATED June 27, 2013.

S/ CYNTHIA IMBROGNO
UNITED STATES MAGISTRATE JUDGE